	Case 3:08-cv-03035-MHP	Document 25	Filed 08/05/2008	Page 1 of 4
1 2 3 4 5 6 7 8 9 10 11 12 13 14	UNITED STAT NORTHERN DIST SAN FRAN DANIEL KEATING-TRAYNOR on behalf of himself and all others similarly situated;		ES DISTRICT COURT TRICT OF CALIFORNIA CISCO DIVISION Case No. CV-08-2907-MHP STIPULATION AND [PROPOSED] ORDER TO ALLOW COMCAST INC. TO	
16 17 18 19 20 21	Plaintiffs vs. AC SQUARE INC.; COMCAS AFSHIN GHANEH; ANDREW BAHMANYAR; AND DOES 1 INCLUSIVE; Defendar	T INC.; V 1-60	FILE ITS MOTION PLAINTIFF'S COM THE INITIAL CASH CONFERENCE Honorable Marilyn H.	IPLAINT PRIOR TO E MANAGEMENT
22 23	Plaintiff Daniel Keating	-Traynor, by and	d through his attorney, I	Daniel Berko, and
24	Defendant Comcast Inc. ("Comcast") by and through its attorneys Morgan, Lewis and Bockius			
25	LLP, hereby stipulate as follows:			
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-	DB2/20781844.2		1 STIPULATIO	Case No. CV-08-2907-MHP ON AND [PROPOSED] ORDER

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RECITALS

- A. On June 11, 2008, the Court set the Initial Case Management Conference in this action for September 14, 2008. See Docket No. 2 (Case No. CV-08-2907-MHP).
- B. On July 10, 2008, Plaintiff served Comcast with the Summons and Complaint in this action.
- C On July 11, 2008, Defendants AC Square, Ghaneh, and Bahmanyar filed Ex Parte Applications for Orders Allowing Defendants to File and Have Heard Motions to Dismiss Pursuant to FRCP 12(b)(6) Prior to Initial Case Management Conference in Case No. CV-08-2907-MPH. See Docket Nos. 7, 8, and 9 (Case No. CV-08-2907-MHP).
- D. On July 15, 2008, the Court granted Defendants AC Square, Ghaneh, and Bahmanyar's Ex Parte Applications for leave to file their motions to dismiss by July 21, 2008. The Court set the following related dates: Oppositions to be filed by August 4, 2008, Replies to be filed by August 11, 2008, and Motion to be heard on August 25, 2008 at 2:00 p.m. See Docket No. 10 (Case No. CV-08-2907-MHP).
- E. On or about July 15, 2008, the parties agreed to an extension of time for Comcast to file a response to Plaintiff's Complaint, up to and including July 30, 2008.
- F. On July 16, 2008, the Court ordered Case No. CV-08-2907 and Case No. CV-08-3035 related. See Docket No. 11 (Case No. CV-08-2907-MHP) and No. 16 (Case No. CV-08-3035-EDL).
- G. On July 17, 2008, Case No. CV-08-3035-EDL was reassigned to the Honorable Judge Marilyn H. Patel.
- H. Federal Rule of Civil Procedure 12(a)(1)(A)(i) requires a defendant to file an answer to a complaint within 20 days after being served, and that Federal Rule of Civil Procedure, Rule 12(b) allows a defendant to serve a motion to dismiss in lieu of an answer. The parties further agree that absent a Court Order allowing for an exception, Standing Order Number 4 prevents Defendant from filing the accompanying motion to dismiss until after the Initial Case Management Conference on September 15, 2008.

TERMS OF STIPULATION

- The parties jointly request that the Court allow Comcast to have its motion to dismiss heard before the Initial Case Management Conference set for September 15, 2008 (Case No. CV-08-2907-MHP).
- 2. Defendant's motion seeks dismissal of Plaintiff's Complaint, in its entirety, without leave to amend. Should the Court decide to dispose of Plaintiff's claims against Comcast prior to the Initial Case Management Conference, Comcast could avoid incurring legal fees and costs by not having to file an answer or make initial disclosures.
- 3. The parties recognize that this Court granted on July 15, 2008 an *ex parte* motion the other defendants brought for this same purpose in this action, and believe it should not be necessary to burden the Court with another such motion.
- 4. Based on the foregoing and in the interest of judicial economy, the parties agree that Defendant should be allowed to file its motion at the earliest possible stage of this litigation.

Bv

/s/ Daniel Berko

14 IT IS SO STIPULATED.

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Dated: July 30, 2008 LAW OFFICES OF DANIEL BERKO

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Daniel Berko
Attorneys for Plaintiff
Daniel Keating-Traynor

Dated: July 30, 2008 MORGAN, LEWIS & BOCKIUS LLP

By /s/ Daryl S. Landy

Daryl S. Landy
Attorneys for Defendant
COMCAST INC.

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DB2/20781844.2 3 Case No. CV-08-2907-MHP STIPULATION AND [PROPOSED] ORDER

IT IS SO ORDERED that:

Dated: August 1, 2008

